

P O R T E R | S C O T T

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ESTATE OF XANDER MANN, AMY
PICKERING, and JUSTIN MANN,

Plaintiffs,

v.

COUNTY OF STANISLAUS,
STANISLAUS COUNTY SHERIFF'S
DEPARTMENT, JEFF DIRKSE,
GERARDO ZAZUETA, and DOE 1 to 20,

Defendants.

CASE NO. 1:21-CV-01098-AWI-SKO

DEFENDANT ZAZUETA'S ANSWER TO
COMPLAINT; DEMAND FOR JURY
TRIAL

Complaint Filed: 7/19/21

Defendant GERARDO ZAZUETA hereby submits the following in Answer to Plaintiffs' Complaint.

INTRODUCTION

Answering the unnumbered section entitled "Introduction," this answering Defendant generally and specifically denies the allegations contained in said paragraph/section.

JURISDICTION & VENUE

1. Answering paragraphs 1, 2 and 3, this answering Defendant contends said paragraphs contain conclusions of law and not averments of fact for which a response is required, but insofar as a response is required, Defendant lacks sufficient information or knowledge to

1 enable him to answer the allegations contained in these paragraphs, and basing his denial on this
2 ground, generally and specifically denies all allegations contained in these paragraphs.

3 **EXHAUSTION**

4 2. Answering paragraph 4, this answering Defendant lacks sufficient information or
5 knowledge to enable him to answer the allegations contained in this paragraph, and basing his
6 denial on this ground, generally and specifically denies all allegations contained in this paragraph.

7 **PARTIES**

8 3. Answering paragraphs 5, 6, and 7, this answering Defendant lacks sufficient
9 information or knowledge to enable him to answer the allegations contained in these paragraphs,
10 and basing his denial on this ground, generally and specifically denies all allegations contained in
11 these paragraphs.

12 4. Answering paragraph 8, this answering Defendant admits the County of Stanislaus
13 is a public entity within California. Answering the remaining allegations in said paragraph, this
14 answering Defendant contends such contains conclusions of law and not averments of facts for
15 which an answer is not required.

16 5. Answering paragraph 10, this answering Defendant admits Jeff Dirkse was the
17 Sheriff of the Stanislaus County Sheriff's Department. Answering the remaining allegations in
18 said paragraph, this answering Defendant contends said remaining allegations contain conclusions
19 of law and not averments of fact to which a response is required, but insofar as a response is
20 required, lacks sufficient information or knowledge to enable him to answer the remaining
21 allegations in this paragraph, and basing his denial on this ground, generally and specifically
22 denies all remaining allegations contained in this paragraph.

23 6. Answering paragraph 11, this answering Defendant admits he was employed with
24 the County as a law enforcement officer. Answering the remaining allegations in said paragraph,
25 this answering Defendant contends said remaining allegations contain conclusions of law and not
26 averments of fact to which a response is required, but insofar as a response is required, lacks
27 sufficient information or knowledge to enable him to answer the remaining allegations in this
28 paragraph, and basing his denial on this ground, generally and specifically denies all remaining
allegations contained in this paragraph.

1 7. Answering paragraph 12, this answering Defendant lacks sufficient information or
2 knowledge to enable him to answer the allegations contained in this paragraph, and basing his
3 denial on this ground, generally and specifically denies all allegations contained in this paragraph.

4 **GENERAL ALLEGATIONS**

5 8. Answering paragraph 13, this answering Defendant contends this paragraph
6 contains conclusions of law and not averments of fact to which a response is required, but insofar
7 as a response is required, this answering Defendant lacks sufficient information or knowledge to
8 enable him to answer the allegations in these paragraphs, and basing his denial on this ground,
9 generally and specifically denies all allegations contained in this paragraph.

10 9. Answering paragraphs 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 26, 27, 28,
11 29, 30, 31, 32, 33, 34, and 35, this answering Defendant lacks sufficient information or knowledge
12 to enable him to answer the allegations contained in these paragraphs, and basing his denial on this
13 ground, generally and specifically denies all allegations contained in these paragraphs.

14 10. Answering paragraphs 36, 37, 39, 40, 41, 42, and 43, this answering Defendant
15 generally and specifically denies all allegations contained in these paragraphs.

16 11. Answering paragraphs 38 and 49, this answering Defendant contends these
17 paragraphs contains conclusions of law and not averments of fact to which a response is required,
18 but insofar as a response is required, this answering Defendant lacks sufficient information or
19 knowledge to enable him to answer the allegations in these paragraphs, and basing his denial on
20 this ground, generally and specifically denies all allegations contained in these paragraphs.

21 12. Answering paragraphs 44, 45, 46, 47, 48, 50, 51, and 52, this answering Defendant
22 lacks sufficient information or knowledge to enable him to answer the allegations in these
23 paragraphs, and basing his denial on this ground, generally and specifically denies all allegations
24 contained in these paragraphs.

25 13. Answering paragraphs 53, 54, 56, and 57, this answering Defendant generally and
26 specifically denies all allegations contained in these paragraphs.

27 14. Answering paragraphs 55, 58, 59, 60, 61, 62, 63, and 64, this answering Defendant
28 lacks sufficient information or knowledge to enable him to answer the allegations in these

1 paragraphs, and basing his denial on this ground, generally and specifically denies all allegations
2 contained in these paragraphs.

3 15. Answering paragraphs 65, 66, and 67, this answering Defendant lacks sufficient
4 information or knowledge to enable him to answer the allegations in these paragraphs, and basing
5 his denial on this ground, generally and specifically denies all allegations contained in these
6 paragraphs.

7 16. Answering paragraph 68, including subparagraphs (a-e), this answering Defendant
8 contends these paragraphs contain incomplete references, argument or conclusions of law and not
9 averments of fact to which a response is required, but insofar as a response is required, this
10 answering Defendant lacks sufficient information or knowledge to enable him to answer the
11 allegations in these paragraphs, and basing his denial on this ground, generally and specifically
12 denies all allegations contained in these paragraphs.

13 **POLICE AND CUSTOM ALLEGATIONS**

14 17. Answering paragraphs 69 and 70, this answering Defendant lacks sufficient
15 information or knowledge to enable him to answer the allegations in these paragraphs, and basing
16 his denial on this ground, generally and specifically denies all allegations contained in these
17 paragraphs.

18 18. Answering paragraph 71 including subparagraphs (a-h), 72, and 73 including
19 subparagraphs (a-d), this answering Defendant generally and specifically denies all allegations
20 contained in this paragraph and/or subparagraphs.

21 19. Answering paragraphs 74 including subparagraphs (a-l), this answering Defendant
22 lacks sufficient information or knowledge to enable him to answer the allegations contained in
23 these paragraphs, and basing his denial on this ground, generally and specifically denies all
24 allegations contained in these paragraphs.

25 20. Answering paragraphs 75, 76, 77, 78 including subparagraphs (a-b), this answering
26 Defendant lacks sufficient information or knowledge to enable him to answer the allegations in
27 these paragraphs, and basing his denial on this ground, generally and specifically denies all
28 allegations contained in these paragraphs.

FIRST CLAIM FOR RELIEF

**Excessive Force
(U.S. Const., Amend. IV; 42 U.S.C. § 1983)**

21. Answering paragraph 79, this answering Defendant contends this paragraph contains conclusions of law and not averments of fact to which a response is required, but insofar as a response is required, this answering Defendant lacks sufficient information or knowledge to enable him to answer the allegations in these paragraphs, and basing his denial on this ground, generally and specifically denies all allegations contained in this paragraph.

22. Answering paragraph 80, this answering Defendant incorporates by reference all responses to paragraphs 1 to 78, to the extent relevant, as if fully set forth herein.

23. Answering paragraphs 81 and 84, this answering Defendant generally and specifically denies all allegations contained in these paragraphs.

24. Answering paragraphs 82 and 83, this answering Defendant lacks sufficient information or knowledge to enable him to answer the allegations in these paragraphs, and basing his denial on this ground, generally and specifically denies all allegations contained in this paragraph.

SECOND CLAIM

**Unwarranted Interference with Familial Association
(U.S. Const., Amend. XIV; 42 U.S.C. § 1983)**

25. Answering paragraph 85, this answering Defendant contends this paragraph contain conclusions of law and not averments of fact to which a response is required, but insofar as a response is required, this answering Defendant lacks sufficient information or knowledge to enable him to answer the allegations in this paragraph, and basing his denial on this ground, generally and specifically denies all allegations contained in this paragraph.

26. Answering paragraph 86, this answering Defendant incorporates by reference all responses to paragraphs 1 to 68, to the extent relevant, as if fully set forth herein.

27. Answering paragraphs 87, this answering Defendant lacks sufficient information or knowledge to enable him to answer the first sentence of the allegations in this paragraph, and basing his denial on this ground, generally and specifically denies all allegations contained in this

paragraph. Answering the remaining allegations, this answering Defendant generally and specifically denies all remaining allegations contained in this paragraph.

28. Answering paragraphs 88 and 89, this answering Defendant generally and specifically denies all allegations contained in these paragraphs.

THIRD CLAIM

Unwarranted Interference with Familial Association (U.S. Const., Amend. I; 42 U.S.C. § 1983)

29. Answering paragraph 90, this answering Defendant contends this paragraph contain conclusions of law and not averments of fact to which a response is required, but insofar as a response is required, this answering Defendant lacks sufficient information or knowledge to enable him to answer the allegations in this paragraph, and basing his denial on this ground, generally and specifically denies all allegations contained in this paragraph.

30. Answering paragraph 91, this answering Defendant incorporates by reference all responses to paragraphs 1 to 68, to the extent relevant, as if fully set forth herein.

31. Answering paragraphs 92, this answering Defendant lacks sufficient information or knowledge to enable him to answer the first sentence of the allegations in this paragraph, and basing his denial on this ground, generally and specifically denies all allegations contained in this paragraph. Answering the remaining allegations, this answering Defendant generally and specifically denies all remaining allegations contained in this paragraph.

32. Answering paragraphs 93 and 94, this answering Defendant generally and specifically denies all allegations contained in these paragraphs.

FOURTH CLAIM

Excessive Force (Cal. Const., Art. I, § 13)

33. Answering paragraphs 95, and 99 this answering Defendant contends these paragraphs contain conclusions of law and not averments of fact to which a response is required, but insofar as a response is required, this answering Defendant lacks sufficient information or knowledge to enable him to answer the allegations in these paragraphs, and basing his denial on this ground, generally and specifically denies all allegations contained in these paragraphs.

34. Answering paragraph 96, this answering Defendant incorporate by reference all responses to paragraphs 1 to 78, to the extent relevant, as if fully set forth herein.

35. Answering paragraphs 97, 100, and 101, this answering Defendant generally and specifically denies all allegations contained in these paragraphs.

36. Answering paragraph 98, this answering Defendant lacks sufficient information or knowledge to enable him to answer the allegations in this paragraph, and basing his denial on this ground, generally and specifically denies all allegations contained in this paragraph.

FIFTH CLAIM
Tom Bane Civil Rights Act
(Cal. Civ. Code 52.1)

37. Answering paragraph 102, this answering Defendant contends this paragraph contain conclusions of law and not averments of fact to which a response is required, but insofar as a response is required, this answering Defendant lacks sufficient information or knowledge to enable him to answer the allegations in this paragraph, and basing his denial on this ground, generally and specifically denies all allegations contained in this paragraph.

38. Answering paragraph 103, this answering Defendant incorporate by reference all responses to paragraphs 1 to 78, to the extent relevant, as if fully set forth herein.

39. Answering paragraph 104, this answering Defendant generally and specifically denies all allegations contained in this paragraph.

40. Answering paragraph 105, this answering Defendant lacks sufficient information or knowledge to enable him to answer the allegations in this paragraph, and basing his denial on this ground, generally and specifically denies all allegations contained in this paragraph.

41. Answering paragraphs 106, this answering Defendant lacks sufficient information or knowledge to enable him to answer the first sentence of the allegations in this paragraph, and basing his denial on this ground, generally and specifically denies all allegations contained in this paragraph. Answering the remaining allegations, this answering Defendant generally and specifically denies all remaining allegations contained in this paragraph.

42. Answering paragraphs 107, this answering Defendant contends this paragraph contains conclusions of law and not averments of fact to which a response is required, but insofar

1 as a response is required, this answering Defendant lacks sufficient information or knowledge to
2 enable him to answer the allegations in this paragraph, and basing his denial on this ground,
3 generally and specifically denies all allegations contained in this paragraph.

4 43. Answering paragraphs 108 and 109, this answering Defendant generally and
5 specifically denies all allegations contained in these paragraphs.

6 **SIXTH CLAIM**
7 **Assault/Battery**

8 44. Answering paragraph 110, this answering Defendant contends this paragraph
9 contain conclusions of law and not averments of fact to which a response is required, but insofar
10 as a response is required, this answering Defendant lacks sufficient information or knowledge to
11 enable him to answer the allegations in this paragraph, and basing his denial on this ground,
12 generally and specifically denies all allegations contained in this paragraph.

13 45. Answering paragraph 111, this answering Defendant incorporate by reference all
14 responses to paragraphs 1 to 78, to the extent relevant, as if fully set forth herein.

15 46. Answering paragraphs 112, 115, and 116, this answering Defendant generally and
16 specifically denies all allegations contained in these paragraphs.

17 47. Answering paragraph 113, this answering Defendant lacks sufficient information or
18 knowledge to enable him to answer the allegations in this paragraph, and basing his denial on this
19 ground, generally and specifically denies all allegations contained in this paragraph.

20 48. Answering paragraph 114, this answering Defendant contends this paragraph
21 contain conclusions of law and not averments of fact to which a response is required, but insofar
22 as a response is required, this answering Defendant lacks sufficient information or knowledge to
23 enable him to answer the allegations in this paragraph, and basing his denial on this ground,
24 generally and specifically denies all allegations contained in this paragraph.

25 **SEVENTH CLAIM**

26 **Negligence**

27 49. Answering paragraph 117, this answering Defendant contends this paragraph
28 contain conclusions of law and not averments of fact to which a response is required, but insofar

1 as a response is required, this answering Defendant lacks sufficient information or knowledge to
2 enable him to answer the allegations in this paragraph, and basing his denial on this ground,
3 generally and specifically denies all allegations contained in this paragraph.

4 50. Answering paragraph 118, this answering Defendant incorporate by reference all
5 responses to paragraphs 1 to 78, to the extent relevant, as if fully set forth herein.

6 51. Answering paragraphs 119, 122, and 123, this answering Defendant generally and
7 specifically denies all allegations contained in these paragraphs.

8 52. Answering paragraph 120, this answering Defendant lacks sufficient information or
9 knowledge to enable him to answer the allegations in this paragraph, and basing his denial on this
10 ground, generally and specifically denies all allegations contained in this paragraph.

11 53. Answering paragraph 121, this answering Defendant contends this paragraph
12 contain conclusions of law and not averments of fact to which a response is required, but insofar
13 as a response is required, this answering Defendant lacks sufficient information or knowledge to
14 enable him to answer the allegations in this paragraph, and basing his denial on this ground,
15 generally and specifically denies all allegations contained in this paragraph.

16 **EIGHTH CLAIM**
17 **Wrongful Death**
(Cal. Code Civ. Proc. 377.60)

18 54. Answering paragraph 124, this answering Defendant contends this paragraph
19 contain conclusions of law and not averments of fact to which a response is required, but insofar
20 as a response is required, this answering Defendant lacks sufficient information or knowledge to
21 enable him to answer the allegations in this paragraph, and basing his denial on this ground,
22 generally and specifically denies all allegations contained in this paragraph.

23 55. Answering paragraph 125, this answering Defendant incorporate by reference all
24 responses to paragraphs 1 to 78, to the extent relevant, as if fully set forth herein.

25 56. Answering paragraphs 126, 129 and 130, this answering Defendant generally and
26 specifically denies all allegations contained in these paragraphs.

57. Answering paragraph 127, this answering Defendant lacks sufficient information or knowledge to enable him to answer the allegations in this paragraph, and basing his denial on this ground, generally and specifically denies all allegations contained in this paragraph.

58. Answering paragraph 128, this answering Defendant contends this paragraph contain conclusions of law and not averments of fact to which a response is required, but insofar as a response is required, this answering Defendant lacks sufficient information or knowledge to enable him to answer the allegations in this paragraph, and basing his denial on this ground, generally and specifically denies all allegations contained in this paragraph.

I.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Based on information and belief, at all times mentioned in the Complaint, Defendant was acting in good faith and is entitled to qualified immunity for the claims asserted pursuant to 42 U.S.C section 1983.

SECOND AFFIRMATIVE DEFENSE

Based on information and belief, as applicable to state claims, Defendant allege that decedent had a duty to exercise due care but failed to do so by his conduct, including but not limited to, failing to comply with lawful orders and/or engaging in conduct by operation of his vehicle with employees of the County and/or the individual Defendant and based thereon, Defendant allege that decedent was himself guilty of comparative negligence or fault due to his failures.

THIRD AFFIRMATIVE DEFENSE

As to each state law claim for relief, Defendant allege, based on information and belief, that all acts and omissions alleged in the Complaint fall within the immunities and defenses and all rights granted to him and each of him by virtue of provisions of the California Government Code Sections 810-996.6. Defendant relies on Vargas v. Cty. of Yolo, 2016 WL 3916329, at *6 (E.D. Cal. July 20, 2016) for the language herein to preserve these defenses.

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TENTH AFFIRMATIVE DEFENSE

Based on information and belief, not all potential beneficiaries of the decedent's estate are parties to the action, and thus any survivor action and/or wrongful death action lacks sufficient standing without all heirs, who are necessary parties.

ELEVENTH AFFIRMATIVE DEFENSE

As to all state law claims for relief, based on information and belief, Plaintiffs and/or all successors-in-interest to decedent's estate, have failed to comply with the requirements of California Government Code section 900 et seq., i.e. the California Government Tort Claims Act.

TWELFTH AFFIRMATIVE DEFENSE

As to all state law claims for relief, based on information and belief, Defendant alleges that Plaintiffs' Complaint is barred by the doctrine of unclean hands in that decedent Xander Mann created or exacerbated the incidents about which Plaintiffs complain of in the Complaint in the manner and method of operation of his vehicle including decedent's ingestion of drugs prior thereto.

II.

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiffs' action be dismissed;
2. That Plaintiffs take nothing by way of his Complaint;
3. That Defendant be awarded his costs of suit, including attorney's fees; and
4. For such other relief as the Court deems proper.

Date: October 11, 2021

Respectfully submitted,

PORTER SCOTT
A PROFESSIONAL CORPORATION

By: /s/ John R. Whitefleet

John R. Whitefleet

Attorneys for Defendant

DEMAND FOR JURY TRIAL

Defendant hereby demands a trial by jury in the above-entitled action as provided by the Seventh Amendment to the United States Constitution and Rule 38 of the Federal Rules of Civil Procedure.

Dated: October 11, 2021

PORTER SCOTT
A PROFESSIONAL CORPORATION

By: /s/ John R. Whitefleet
John R. Whitefleet
Attorneys for Defendant

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